

Notice of Allowability

Application No.

10/068,683

Applicant(s)

GERNER ET AL.

Examiner

Art Unit

Gordon J Stock

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed September 11, 2003.
2. ☒ The allowed claim(s) is/are 1-20.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No. _____.
 - (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
 - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet.

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892) | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 4 <input type="checkbox"/> Interview Summary (PTO-413), Paper No. _____ |
| 5 <input type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. _____ | 6 <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9 <input type="checkbox"/> Other |

EXAMINER'S AMENDMENT

1. **Summary of Interview:** An interview with the attorney, Mr. Mark Burns, was conducted via telephone on September 10, 2003.

It was decided that it is not necessary for the applicant to provide a separate record of the substance of the interview, for a full description of the interview by the examiner follows.

The interview concerned the proposed amendment of claims 1 and 18 to overcome the previous rejection of the claims (specifically, the rejection of claims 1 and 18 under 35 U.S.C. 102(e) by **Dourdeville et al. (6,188,813)**) and to place them in condition for allowance. The discussion focused upon amending claim 1's cell structure "including a radiant energy arresting portion and a radiant energy propagation portion" and amending claim 18's step (b) to place them in condition for allowance.

Subsequently, through the proposed amendment of claims 1 and 18 (see amendment filed September 11, 2003), the rejection of claims 1 and 18 under 35 U.S.C. 102(e) was obviated. In addition, the rejection of the claims depending from claims 1 and 18 had been obviated.

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Mark Burns on October 9, 2003.

The following claims, **claims 1-3, 14, 15, and 18**, have been amended with additions to the claims underlined and subtractions bracketed.

1. (currently amended) A flow cell for transporting fluid in a radiant energy field, comprising:

[(a)] a cell structure comprising a first material having a first open channel extending therethrough, and a first elongated tube concentrically disposed around [such] said first open channel, said first tube comprising a second material distinct from said first material, said first tube itself including a radiant energy arresting portion and a radiant energy propagation portion.

2. (currently amended) A flow cell as in Claim 1, including a first end cap that is sealingly engagable with said cell structure, said first end cap having a protrusion extending at least partially into [such] said first open channel, and a second open channel substantially aligned with [such] said first open channel to extend the continuous passageway through said first end cap.

3. (currently amended) A flow cell as in Claim 2 including a second end cap disposed on, and sealingly engagable with, an opposing end of said cell structure, said second end cap having a protrusion extending at least partially into [such] said first open channel, and a third open channel substantially aligned with [such] said first open channel so as to extend the continuous passageway through said second end cap.

14. (currently amended) A flow cell as in Claim 4 wherein said protrusions of said first and second end caps are positioned to displace respective portions of said third [layer] tube, thereby forming a fluid-tight seal between said third [layer] tube and said protrusions.

15. (currently amended) A flow cell as in Claim 3 wherein said second end cap protrusion is displaced from respective ends of said first tube, whereby a gap volume is formed for fluid residence therein.

18. (currently amended) A method of determining sample composition through radiant energy interaction, comprising:

- (a) providing a cell body having an open bore extending therethrough;
- (b) providing one or more layers of material concentrically lining [such] said open bore, at least an innermost one of said layers having a radiant energy arresting portion integral therewith;
- (c) attaching one or more end caps to said cell body, said one or more end caps including protrusions extending therefrom, wherein said protrusions extend at least partially into [such] said open bore such that a fluid-tight seal is formed between said one or more material layers and said [protrusion] protrusions, said end caps further including one or more open channels in substantial alignment with [such] said open bore;
- (d) transporting sample fluid and radiant energy through [such] said open bore such that the radiant energy passes through the sample fluid; and
- (e) receiving and interpreting the radiant energy that has passed through the sample fluid.

Allowable Subject Matter

3. **Claims 1-20** are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

As to **claim 1**, the prior art of record, taken alone or in combination, fails to disclose or render obvious in a flow cell for transporting fluid in a radiant energy field “said first tube comprising a second material distinct from said first material, said first tube itself including a radiant energy arresting portion and a radiant energy propagation portion” in combination with the rest of the limitations of **claims 1-17**.

As to **claim 18**, the prior art of record, taken alone or in combination, fails to disclose or render obvious in a method of determining sample composition through radiant energy interaction “at least an innermost one of said layers having a radiant energy arresting portion integral therewith,” in combination with the rest of the limitations of **claims 18-20**.

Fax/Telephone Numbers

If the applicant wishes to send a fax dealing with either a proposed amendment or a discussion with a phone interview, then the fax should:

- 1) Contain either a statement “DRAFT” or “PROPOSED AMENDMENT” on the fax cover sheet; and
- 2) Should be unsigned by the attorney or agent.

This will ensure that it will not be entered into the case and will be forwarded to the examiner as quickly as possible.

Papers related to the application may be submitted to Group 2800 by Fax transmission. Papers should be faxed to Group 2800 via the PTO Fax machine located in Crystal Plaza 4. The form of such papers must conform to the notice published in the

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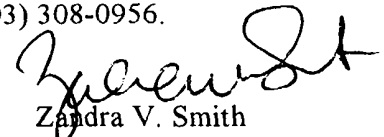
Official Gazette, 1096 OG 30 (November 15, 1989). The CP4 Fax Machine number is:
(703) 872-9306

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gordon J. Stock whose telephone number is (703) 305-4787. The examiner can normally be reached on Monday-Friday, 10:00 a.m. - 6:30 p.m.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

gs

October 15, 2003


Zandra V. Smith
Primary Examiner
Art Unit 2877